



February 10, 2000

Mr. Miles K. Risley
Senior Assistant City Attorney
Legal Department
City of Victoria
P.O. Box 1758
Victoria, Texas 77902-1758

OR2000-0497

Dear Mr. Risley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132064.

The City of Victoria (the "city") received a request for "any and all documents received from Central Power & Light, its agents, representatives, or attorneys, relating to any and all claims set forth in the case styled: Cause No. C-2510-96-D; *City San Juan, et al. v. Central Power & Light*; in the 206th Judicial District of Hidalgo County, Texas, (this request includes correspondence, charts, summaries, narratives, reports, calculation, and formulas)." You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

The information you provided this office indicates that the city is not currently a party to the pending litigation. However, we need not examine whether litigation involving the city is

reasonably anticipated because, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. As the request for information is specifically for documents "received from Central Power & Light, its agents, representatives, or attorneys," the potential opposing party in litigation with the city, none of the requested information is protected from required disclosure by section 552.103. We have marked which documents appear to have been received from Central Power & Light. Those documents must be released.

We note that the city is required to submit to the attorney general "a copy of the specific information requested," in order for this office to determine whether that information is required to be released. Gov't Code § 552.301(e)(1)(D). However, you have submitted and claimed exceptions for a number of documents not responsive to the request. We do not address the public availability of those documents, except to point out that the city may voluntarily release any of those documents or portions thereof that are not confidential by law. Gov't Code § 552.007(a). We also refer you to section 552.022(a)(17) of the Government Code, which provides that information contained in a public court record is public information. Those documents must be released if requested.

In summary, the court records and fee bills must be released, if requested. Any information received from Central Power & Light, its agents, representatives, or attorneys must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 132064

Encl. Submitted documents

cc: Ms. Elizabeth B. Hawkins
Quinn & Laminack
2300 Lyric Centre Building
440 Louisiana
Houston, Texas 77002
(w/o enclosures)